

**NOT FOR CITATION**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

COMMODITY FUTURES TRADING  
COMMISSION

Plaintiff,

No. C 05-2142 PJH

v.

**ORDER GRANTING RECEIVER'S  
PETITION AND MOTION AND  
VACATING HEARING DATE**

ROBERT JOSEPH BEASLEY, et al.,

Defendants.

Before this court is the temporary receiver's petition for instructions and motion for an order seeking transfer of receivership property. Having carefully read the parties' papers and considered the relevant legal authority, the court hereby GRANTS the motions for the reasons that follow.<sup>1</sup>

**BACKGROUND**

This case involves the Commodity Exchange Act, which establishes a system for regulating the purchase and sale of commodity futures contracts, and options on commodity futures. See 7 U.S.C. §60(1)(A) and (B). On May 25, 2005, plaintiff, the Commodity Futures Trading Commission (the "Commission"), sued defendants Joseph Beasley ("Beasley") and Longboat Global Funds Management ("Longboat") for violation of the Act. On August 19, 2005, the court entered a consent order, granting preliminary injunctive and other equitable relief. As part of that relief, the court appointed Robb Evans

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<sup>1</sup> The court finds this motion appropriate for decision without oral argument as permitted by Civil L.R. 7-1(b) and Fed. R. Civ. P. 78. See also Lake at Las Vegas Investors Group, Inc. v. Pacific Malibu Dev. Corp., 933 F.2d 724, 729 (9th Cir. 1991) (holding that the court's consideration of the moving and opposition papers is deemed an adequate substitute for a formal hearing), cert. denied, 503 U.S. 920 (1992). Accordingly, the March 1, 2006 hearing date is hereby VACATED.

1 & Associates LLC ("REA") as temporary receiver.

2 Prior to the filing of the instant lawsuit, however – on October 15, 2004 – a group of  
3 four investor plaintiffs ("Illinois plaintiffs") sued Longboat, Beasley, and Piranha Capital (not  
4 a defendant in this action) in Illinois state court, alleging fraud and breach of contracts as a  
5 result of defendants' failure to honor certain requests for redemption totaling approximately  
6 \$1.4 million. The Illinois plaintiffs sought and obtained an attachment order from the court –  
7 in the amount of a \$1,000,000.00 asset held by Piranha – on October 27, 2004.

8 Thereafter, defendants removed the case to the federal district court for the northern district  
9 of Illinois. Once in federal court, defendants moved to vacate the state court attachment  
10 order, but the federal court denied defendants' request.

11 REA now petitions this court for an order allowing petitioner to seek transfer of the  
12 \$1,000,000 Piranha asset from the Illinois district court.

### 13 DISCUSSION

14 As the Ninth Circuit has recognized, "case law involving district court administration  
15 of an equity receivership ... is sparse and is usually limited to the facts of the particular  
16 case." See Securities & Exchange Comm'n v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986).  
17 Nonetheless, the Ninth Circuit has enunciated two basic principles in dealing with equitable  
18 receiverships. First, that the district court "has broad powers and wide discretion to  
19 determine the appropriate relief in an equity receivership." See Securities & Exchange  
20 Comm'n v. Lincoln Thrift Ass'n, 577 F.2d 600, 606 (9th Cir. 1978). Second, that "a primary  
21 purpose of equity receiverships is to promote orderly and efficient administration of the  
22 estate by the district court for the benefit of creditors." Hardy, 803 F.2d at 1038.

23 For the reasons below, the court finds that REA has made a sufficient showing to  
24 warrant an order granting it leave to seek the transfer of the Piranha asset at issue from the  
25 Illinois district court.

26 To begin with, the August 19 consent order entered by the court directed and  
27 authorized REA to do the following: take control and possession of all assets of Longboat  
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1 related to Piranha that are under Longboat's control, wherever situated; perform all acts  
2 necessary to preserve those assets; and intervene in or become a party to any federal  
3 action necessary to preserve the Longboat assets. See Consent Order of Preliminary  
4 Injunction and Other Equitable Relief, section D, ¶¶ B, C, G. As the \$1,000,000 Piranha LC  
5 asset is held in an account which is purportedly under Longboat's control, REA would  
6 appear to have the authority to assert control over this asset. And since REA has been  
7 entrusted with control over all Longboat's assets and accounts, and must properly take  
8 account of, and report on, all such assets and accounts which may then form the basis for  
9 any recovery issued to aggrieved investors in the instant case, REA's request to seek a  
10 transfer of the asset is a good faith request.

11 Furthermore, although the Illinois plaintiffs argue that REA is improperly trying to  
12 liquidate Piranha Capital's assets, this does not appear to be the case. As REA points out,  
13 the asset in question is already restrained under the Illinois court's order. Accordingly,  
14 REA's actions in seeking to take control of the asset cannot constitute any independent  
15 liquidation of Piranha's assets.

16 Moreover, the interests of the Illinois plaintiffs as creditors can effectively be taken  
17 into account by REA's proposal to hold the asset in trust, pending resolution of the Illinois  
18 district court action. In that event, if the plaintiffs there are successful, they can proceed to  
19 recover against the receiver the funds in trust.

20 Most significantly, however, the court notes that REA merely seeks an order from  
21 the court granting it leave to request a transfer of the property in question from the Illinois  
22 district. Thus, while all the reasons above may be persuasive in arguing for transfer, it is  
23 the district court in Illinois, and not this court, that will ultimately decide the question of  
24 transfer. This eliminates any concerns raised by the Illinois plaintiffs about recognizing the  
25 jurisdiction of a sister court. The court here need only decide whether REA has sufficiently  
26 shown that it should not be precluded from requesting the transfer in the first place.

27 Since the court finds that REA has successfully done so, REA's request is  
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1 GRANTED.

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3 **IT IS SO ORDERED.**

4 Dated: February 24, 2006



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PHYLLIS J. HAMILTON  
United States District Judge